

1 **BIBIYAN LAW GROUP, P.C.**
2 David D. Bibiyan (SBN 287811)
3 *david@tomorrowlaw.com*
4 Jeffrey D. Klein (SBN 297296)
5 *jeff@tomorrowlaw.com*
6 Sarah H. Cohen (SBN 330700)
7 *sarah@tomorrowlaw.com*
1460 Westwood Blvd.
Los Angeles, California 90024
Tel: (310) 438-5555; Fax: (310) 300-1705
Atorneys for Plaintiff MACKENZIE ANNE
THOMA, an individual and on behalf of all
others similarly situated,

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

12 MACKENZIE ANNE THOMA, a.k.a.
13 KENZIE ANNE, an individual and on behalf
of all others similarly situated.

CASE NO.: 2:23-cv-04901-WLH
(AGRx)

14 Plaintiff.

[Assigned to the Hon. Alicia Rosenberg]

15

16 VXN GROUP LLC, a Delaware limited
17 liability company; MIKE MILLER, an
18 individual; and DOES 1 through 100,
inclusive,

INFORMAL DISCOVERY CONFERENCE STATEMENT

Defendants.

1 Pursuant to the Rules and Procedures of the Honorable Alicia Rosenburg, this
2 Joint Statement is being submitted by counsel for Plaintiff Mackenzie Anne Thoma
3 (“Plaintiff”), an individual and on behalf of all others similarly situated, and counsel
4 for Defendants VXN GROUP, LLC and MIKE MILLER (“Defendants”) (hereby
5 referred to collectively as “the Parties”).

6 **PLAINTIFF’S POSITION**

7 **I. FRCP 30(b)(6) Deposition**

8 On July 23 2024, Plaintiff served Defendant VXN Group, LLC with an FRCP
9 30(b)(6) Notice of Deposition (“Deposition Notice), which is attached hereto as
10 Exhibit “A”. The Deposition Notice of Deposition contains a total of forty-one (41)
11 topics all within the scope of Phase 1 discovery (i.e., Independent Contract vs.
12 Employee; Wage Order 12 Professional Actor Exemption). The Deposition Notice set
13 the deposition for August 7, 2024.

14 On July 29, 2024, counsel for Defendants emailed counsel for Plaintiff
15 informing Plaintiff of a scheduling conflict, identifying Basia Lew as a designated
16 person for the deposition, notifying Plaintiff that VXN Group, LLC will need to
17 produce multiple deponents, and objecting to many of the topics.

18 On August 9, 2024, the parties engaged in meet and confer via Zoom regarding
19 scheduling of the deposition and the topics. Prior to the call Defendant provided
20 Plaintiff with specific objections to the topics. During the meet and confer, the parties
21 agreed to the removal of a number of requests as well as narrowing the scope of a
22 number of requests. However, there are several outstanding topics that the parties
23 could not agree on as Defendant claims they are outside of the scope of Phase 1
24 discovery and thus improper.

25 Plaintiff will provide Defendants with updated topics pursuant to the parties’
26 agreements during the August 9, 2024 meet and confer prior to the IDC. However,
27 Plaintiff does not necessarily concede to all of the agreements identified in
28 Defendants’ Position below.

1 **II. Ryan Murphy's Supplemental Responses**

2 Defendants have been informed that Plaintiff's counsel is diligently working
3 on providing supplemental responses. Furthermore, Plaintiff's counsel recently
4 became aware (at the Ryan Murphy deposition and Plaintiff's deposition conducted
5 on July 22, 2024 and August 13, 2024, respectively) that a privilege log is required.
6 Plaintiff's counsel is working diligently to put the privilege log together and produce
7 supplemental responses.

8 **DEFENDANTS' POSITION**

9 **I. FRCP 30(b)(6) Deposition**

10 On July 23, 2024, Plaintiff's counsel emailed Notice of Deposition
11 ("Deposition Notice") pursuant to FRCP 30(b)(6), which is attached hereto as Exhibit
12 "A". Defendants contend that the majority of the forty-one (41) topics Plaintiff seeks
13 to discuss exceed the scope of Phase 1 discovery (*i.e.*, Independent Contract vs.
14 Employee; Wage Order 12 Professional Actor Exemption). On August 9, 2024,
15 Defendants provided individualized written objections to Plaintiff primarily on this
16 basis. Defendants' Global Objections summarized Plaintiff's failure to limit its topics
17 to the Phase I discovery:

18 Global Objections:

19 (a) The first phase of discovery is be limited to two threshold issues related
20 to Plaintiff's individual claims: (i) whether Plaintiff is an independent
21 contractor or employee; and (ii) whether Plaintiff falls under the professional
22 actor exemptions of IWC Wage Order 12.

23 [Dkt. 66 at 8:5-8]

24 (b) Plaintiff's definition of "Claim Period" as "April 20, 2019 through the
25 present" exceeds the relevant time period for Phase I discovery as Plaintiff
26 allegedly only provided services to VXN from November 2020 through
27 September 2022.

28 (c) Designation with knowledge of "any and all policies, practices, and
29 procedures" is impermissible class discovery. VXN is willing to provide
30 witnesses with knowledge of how Thoma was treated based upon the
31 contractual arrangement at issue.

1 As a result of Defendants objections,

2 (i) Plaintiff's counsel *withdrew* topics 26, 27, 29, and 31.

3 (ii) Plaintiff's counsel agreed to amend topics: 8, 9, 10, 12, 13, 15, 17, 18,
4 19, 25, 33, and 41, by replacing discussion of Defendant's "policies,
practices, and procedures" to factual circumstances regarding Plaintiff.

5 (iii) Plaintiff's counsel agreed to "circle back" on topics: 1, 2, 14, 16, 20, 22,
6 23, 24, 28. To date, Plaintiff has not provided Defendants with any
update on those topics.

7 (iv) Plaintiff's counsel agreed to "adjust the language" on topics: 21, 30, 36,
8 37, 38, 39, and 40. To date Plaintiff's counsel has not provided the
updated language.

9 (v) Plaintiff's counsel agreed to limit the relevant time period to Plaintiff's
employment only as to topics: 32 and 34.

10
11 Defendants believe it would save the Court and the parties significant time if
12 Plaintiff's counsel updated Defendants in advance of the IDC on Plaintiff's position
13 on the topics listed under items (ii) – (iv) listed above.

14 **II. Ryan Murphy's Supplemental Responses**

15 On May 29, 2024, Defendants personally served Ryan Murphy a Rule 45
16 Subpoena. On May 31, 2024, Plaintiff's Counsel issued Murphy a letter demanding
17 Murphy not to respond to the Subpoena until the Court's ruling on Plaintiff's
18 Motion to Quash, which Plaintiff never filed. On June 7, 2024, Plaintiff's counsel,
19 now representing Murphy as a client, issued objections to the Subpoena on
20 Murphy's behalf without producing any documents. On July 3, 2024, this Court
21 ordered Plaintiff's counsel to serve supplemental responses "and complete his
22 production of responsive documents." The Court also ordered Murphy's deposition
23 to take place at the federal courthouse in Las Vegas.¹ [Dkt. 88]. Plaintiff's counsel

24
25 ¹ Murphy testified that the purported death threat resulting in his deposition being
26 taken in the Las Vegas Federal Courthouse was communicated to him by a third-party
27 named Sid Vision, whom Murphy otherwise considered "clearly a liar," in the fall of
28 2022, whereas Plaintiff's counsel represented to this Court that the alleged threat
occurred in May of 2024.

1 provided Murphy's Supplemental Responses on July 17, 2024. That same day,
2 Defense counsel notified Plaintiff's counsel via email of continued deficiencies in
3 Murphy's Supplemental Responses. On July 19, the parties attended an IDC to
4 resolve outstanding issues. On Saturday, July 20, 2024, Plaintiff's provided
5 Murphy's Second Supplemental Responses stating in pertinent part: "Respondent
6 will produce all non-privileged documents within his possession, custody, and
7 control."

8 On July 21, 2024, the day before Ryan Murphy's deposition, Defendants
9 notified Plaintiff's counsel that the Second Supplemental Responses indicated that
10 Murphy had access to responsive documents that were not produced, namely,
11 information from Murphy's Instagram account:

12 The documents produced indicate that Murphy's IG archive download for the
13 period 11/11/20 through 7/19/24 was first made available on July 19, 2024.
14 (The downloads are available for 4 days and that one expires on July 23,
2024.)

15 Defendants must have a reasonable opportunity to review those documents
16 prior to the deposition or Defendants will be forced to leave Murphy's
17 deposition open and resume it on another day.

18 Equally important, the 01/01/04 through 7/20/24 IG download being in
19 process should not preclude a production of the documents already available.
20 Since none of the responsive documents were produced prior to Murphy's
21 deposition, *Defendants were unable to complete Murphy's deposition.*

22 On July 30, 2024, Defendants made yet second request for the responsive
23 documents. On August 13, 2024, Defendants deposed Plaintiff without the benefit of
24 Murphy's supplemental production. On August 15, 2024, Defendants made their
25 third request for the responsive documents. On Friday, August 16, 2024, Plaintiff's
26
27

1 counsel wrote: "I am unable to confirm whether any supplementals will be
2 provided prior to the IDC." Thus, forty-nine (49) days after this Court's July 3, 2024
3 Order that Murphy "complete his production of responsive documents," Defendants
4 are still awaiting Plaintiff's counsel's compliance.

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6
7 Dated: August 21, 2024

BIBIYAN LAW GROUP, P.C.

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9
10 By: /s/ Sarah H. Cohen
11 DAVID D. BIBIYAN
12 JEFFREY D. KLEIN
13 SARAH H. COHEN
14 Attorneys for Plaintiff

15
16 Dated: August 21, 2024

17 By: /s/ Trey Brown
18 BRAD KANE
19 TREY BROWN
20 Attorneys for Defendant

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EXHIBIT A

1 **BIBIYAN LAW GROUP, P.C.**
2 David D. Bibiyan (Cal. Bar No. 287811)
david@tomorrowlaw.com
3 Jeffrey D. Klein (Cal. Bar No. 297296)
jeff@tomorrowlaw.com
4 Sarah H. Cohen (Cal. Bar No. 330700)
sarah@tomorrowlaw.com
5 Rafael Yedoyan (Cal. Bar No. 351499)
rafael@tomorrowlaw.com
6 Jason Rothman (Cal. Bar No. 304961)
jason@tomorrowlaw.com
7 1460 Westwood Blvd.
8 Los Angeles, California 90024
9 Telephone: (310) 438-5555
10 Facsimile: (310) 300-1705
11

12 Attorneys for Plaintiff, MACKENZIE ANNE THOMA,
on behalf of herself and all others similarly situated

13 **IN THE UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15

16 MACKENZIE ANNE THOMA, a.k.a.
17 KENZIE ANNE, an individual and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 VXN GROUP LLC, a Delaware limited
liability company; STRIKE 3
22 HOLDINGS, LLC, a Delaware limited
liability company; GENERAL MEDIA
23 SYSTEMS, LLC, a Delaware limited
liability company; MIKE MILLER, an
individual; and DOES 1 through 100,
24 inclusive,

25 Defendants.

26 CASE NO.: No. 2:23-cv-04901-WLH
(AGRx)

27 **NOTICE OF DEPOSITION OF
AGENT(S) OF DEFENDANT VXN
GROUP, LLC. PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 30(b)(6)**

28 DATE: August 7, 2024
TIME: 10:00 a.m.
PLACE: 1460 Westwood Blvd., Los
Angeles, California 90024

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2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure
4 30(B)(6) and 45, Plaintiff Mackenzie Anne Thoma (“Plaintiff”) will take the
5 deposition of VZN Group, LLC (“Defendant”) through its designated agent or agents
6 by stenographic means upon oral examination on August 7, 2024 at 10:00 a.m. PST.
7 Defendant is requested to designate the person or persons most knowledgeable and
8 prepared to testify on behalf of VZN Group, LLC, concerning the subject matter
9 described herein.

10 In accordance with Rule 30(b)(4) of the Federal Rules of Civil Procedure, the
11 deposition will take place remotely via audio video conference.

12 The deposition will continue day to day, at the same time at Bibiyan Law Group
13 at 1460 Westwood Blvd., Los Angeles California 90024, weekends and holidays
14 excepted, until completed.

15 The deposition will be conducted before a duly authorized court reporter or
16 other person authorized by law to administer oaths.

17 Pursuant to Rule 30(b)(3) of the Federal Rules of Civil Procedure, Plaintiff
18 intends to cause the proceedings to be recorded both stenographically and by
19 audio/video tape.

20 If an interpreter is required to translate testimony, notice of the same must be
21 given at least five (5) calendar days before the deposition date, and the specific
22 language and/or dialect designated.

23 / / /

24 / / /

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1 **PLEASE TAKE FURTHER NOTICE** that the matters on which this
2 deposition is requested are as follows:

3 1. Defendant's corporate structure from April 20, 2019 through the present
4 (the "Claim Period").

5 2. Defendant's management structure during the Claim Period.

6 3. Any and all timekeeping policies, practices and procedures for non-
7 exempt California employees during the Claim Period.

8 4. Plaintiff's time entries during the Claim Period.

9 5. Any and all policies, practices and procedures regarding how work
10 schedules are communicated to Plaintiff.

11 6. Any and all policies, practices and procedures regarding the editing,
12 modification, or adjustment of Plaintiff's time entries during the Claim Period.

13 7. Defendant's handbook(s), and any and all revisions thereto, which apply
14 to Plaintiff during the Claim Period.

15 8. Any and all policies which would apply to Plaintiff during the Claim
16 Period while she rendered services to Defendant, including, but not limited to, (i)
17 tattoos, body piercings, cosmetic body-related alterations.

18 9. Any and all policies, practices, and procedures that would indicate
19 whether Plaintiff was an independent contractor while working for Defendant during
20 the Claim Period.

21 10. Any and all policies, practices, and procedures that would indicate
22 whether Plaintiff was an employee while working for Defendant during the Claim
23 Period.

24 11. Any and all policies, practices and procedures regarding the payment of
25 wages, including overtime and minimum wages, to Plaintiff during the Claim Period.

26 12. Any and all policies, practices, and procedures discussing whether
27 Plaintiff was allowed to perform work for compensation for other individuals or
28 entities in the adult entertainment industry during the Claim Period.

1 13. Any and all policies, practices, and procedures discussing whether
2 Plaintiff was free to accept or reject work assignments provided to her by Defendant
3 during the Claim Period

4 14. Any and all policies, practices, and procedures discussing whether
5 Plaintiff was insulated from loss of profits during the Claim Period.

6 15. Any and all policies, practices, and procedures discussing the payment
7 of Plaintiff's wages during the Claim Period.

8 16. Any and all policies, practices, and procedures discussing whether
9 Plaintiff's work relationship with Defendant concluded after Plaintiff finished a job
10 during the Claim Period.

11 17. Any and all policies, practices, and procedures discussing whether
12 Plaintiff was free to hire employees without Defendant's knowledge or consent to
13 perform work Defendant hired Plaintiff to complete during the Claim Period.

14 18. Any and all policies, practices, and procedures discussing whether
15 Plaintiff could decide what locations she would work in during the Claim Period.

16 19. Any and all policies, practices, and procedures discussing whether
17 Plaintiff could choose who to have sex with when performing in shoots for Defendant
18 during the Claim Period.

19 20. Any and all policies, practices, and procedures discussing Defendant's
20 process for insuring Plaintiff maintained all proper licenses to be considered a
21 business within the adult entertainment industry during the Claim Period.

22 21. Any and all facts that support Defendant's contract with Plaintiff during
23 the Claim Period.

24 22. Any and all policies, practices, and procedures regarding Defendant
25 working with Loan Out Companies during the Claim Period.

26 23. Any and all policies, practices, and procedures regarding whether
27 Plaintiff falls under the business-to-business exception while working with Defendant
28 during the Claim Period.

1 24. Any and all policies, practices, and procedures relating to Defendant's
2 claim that Plaintiff is covered under the business-to-business exception during the
3 Claim Period.

4 25. Any and all facts that indicate Plaintiff held herself out to the public as a
5 business who would perform the same type of work she performed for Defendant
6 during the Claim Period.

7 26. Any and all policies, practices, and procedures relating to Defendant's
8 relationship to Strike 3 Holdings, LLC.

9 27. Any and all policies, practices, and procedures relating to Defendant's
10 relationship to General Media Systems, LLC.

11 28. Any and all policies, practices, and procedures relating to Defendant's
12 relationship with Mike Miller.

13 29. Defendant's policies, practices and procedures regarding payment of
14 bonuses, incentive pay, commissions, and how they were paid by Defendant to
15 Plaintiff during the Claim Period.

16 30. Defendant's policies, practices and procedures regarding the calculation
17 and payment of wages, including overtime wages, to its Plaintiff during the Claim
18 Period.

19 31. Defendant's policies, practices and procedures regarding issuing
20 itemized wage statements to Plaintiff during the Claim Period, including the actual
21 itemized wage statements issued to Plaintiff.

22 32. Any and all job duties of Plaintiff during the Claim Period.

23 33. Any and all policies, practices and procedures regarding the training of
24 Plaintiff during the Claim Period, including the actual training provided to her.

25 34. Any and all facts regarding Defendant's contention that Plaintiff was a
26 professional actor during the Claim Period.

27 35. Performance evaluations by Defendant of Plaintiff during the Claim
28 Period.

1 36. Any and all policies, practices and procedures regarding meal periods
2 furnished by Defendant to Plaintiff during the Claim Period.

3 37. Any and all policies, practices and procedures regarding rest periods
4 furnished by Defendant to Plaintiff during the Claim Period.

5 38. The tracking of meal periods and rest periods taken by Plaintiff during
6 the Claim Period.

7 39. Any and all policies, practices and procedures regarding the payment of
8 a premium payment for unfurnished, untimely, or interrupted breaks (including meal
9 or rest periods) by Plaintiff during the Claim Period.

10 40. The payment of a premium payment for unfurnished, untimely, or
11 interrupted breaks (including meal or rest breaks) to Plaintiff during the Claim Period.

12 41. All job descriptions associated with Plaintiff's employment during the
13 Claim Period.

15 Dated: July 23, 2024

BIBIYAN LAW GROUP, P.C.

18 By: /s/ Sarah H. Cohen

19 DAVID D. BIBIYAN

20 JEFFREY D. KLEIN

21 SARAH H. COHEN

22 RAFAEL YEDOYAN

23 Attorneys for Plaintiff MACKENZIE
24 ANNE THOMA, on behalf of herself and
25 all others similarly situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1460 Westwood Blvd., Los Angeles, CA 90024.

On July 23, 2024, I caused a true and correct copy of the foregoing document(s) described as **NOTICE OF DEPOSITION OF AGENT(S) OF DEFENDANT VXN GROUP, LLC. PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)** to be served by electronic transmission to the below referenced electronic e-mail address as follows: The above document(s) were served on the interested parties in this action as follows: *BY ELECTRONIC MAIL: I am readily familiar with our office's practice of electronic mail transmitted by electronic mail transmission and that the transmission was reported as complete and delivered, and without error.*

Brad S. Kane
Kane Law Firm
bkane@kanelaw.la
Attorneys for Defendant, Vixen Media Group

Christian Waugh
cwaugh@waugh.legal
Attorneys for Defendant, Vixen Media
Group

Trey Brown
trey.brown@vixenmediagroup.com
In House Counsel -Vixen Media Group

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 23, 2024 at Los Angeles, California.

/s/ Nadia Rodriguez
Nadia Rodriguez